

## **CIVIL SERVICE COMMISSION MINUTES**

**March 20, 2002**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin  
Barry I. Newman  
Roy Dixon  
Sigrid Pate  
Mary Gwen Brummitt

Absent was: None.

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
March 20, 2002

1:45 p.m.      CLOSED SESSION:    Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>5,6,7,8</u>	<u>6</u>		<u>9</u>

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Pate. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A.    Commissioner Dixon: James Rutkowski, Esq., on behalf of **Robert Saenz**, Protective Services Worker II, appealing an Order of Reduction in Compensation and Charges from the Health and Human Services Agency (HHSA).

B.    Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Sharon V. Epps**, former Correctional Deputy Probation Officer II; **Jamie R. Lee**, **Nailah Kathrada** and **Bounma Sanmur**, former Correctional Deputy Probation Officers I, appealing Orders of Removal and Charges from the Department of Probation. (Interim verbal report.)

C.    Commissioner Austin: Discussion of Executive Officer's employment (off-docket item).

**REGULAR AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1.    Approval of the Minutes of the regular meeting of March 6, 2002.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

2. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Jonathan Wadley**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

**Confirmed.**

3. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Kalela Scott**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

**Confirmed.**

## DISCIPLINES

### Findings

4. Commissioner Dixon: James Rutkowski, Esq., on behalf of **Robert Saenz**, Protective Services Worker II, appealing an Order of Reduction in Compensation and Charges from the HHSA.\*

### FINDINGS AND RECOMMENDATIONS:

Employee is charged with Cause I - Conduct unbecoming an employee (viewing and forwarding pornography and offensive material via County email); Cause II - Guilty of damage or waste of public property; Cause III - Failure of good behavior; Cause IV - Guilty of acts incompatible with or inimical to the public service. Employee has been employed as a Protective Services Worker (PSW) in the HHSA for over 3 years and has had no prior discipline.

The subject discipline is the result of the Agency's investigation of a complaint about the misuse of email in the Agency's Fallbrook Child Protective Services Unit. The investigation revealed the widespread misuse of the County's email system for non-County purposes, including the transmission of offensive and pornographic material. At the Skelly hearing, Employee initially denied viewing or sending pornographic emails. He ultimately admitted viewing and sending inappropriate emails.

It was apparent at the Commission hearing that there was widespread distribution and viewing of inappropriate email within the unit, as well as other units within the building. While it appeared that the purpose of the email was for a type of humor-through-disgust, the employees who participated in it were recklessly laying the foundation for a sexually hostile work environment. Given the severity of the type of activity and the potential for creating County liability, the selected level of discipline is insufficient. The county's policy on such egregious transgressions should be interpreted as zero tolerance.

In light of the above, the hearing officer concluded that the penalty imposed by the Agency is insufficient, and that the penalty should be at least doubled. Employee is guilty of Cause I, II, III and IV. It is therefore recommended that that the Order of Reduction in Compensation and Charges reducing Employee's compensation from Step 3 to Step 2 be increased from ten (10) pay periods to Twenty (20) pay periods; that the Commission read and file this report; and that proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Dixon to approve Findings and Recommendations; seconded by**

**Pate. Carried.**

The President spoke for the Commission stating that it does not view the above issues in a trivial manner. The Commission will support severe discipline for major variations from County policy.

## **SELECTION PROCESS**

### **Complaints**

5. **Rosemarie de Gracia**, Associate Accountant, HHSA, appealing the Department of Human Resources' decision that she is ineligible to compete in the recruitment for the classification of Senior Accountant. (Continued from the Commission meeting of March 6, 2002)

RECOMMENDATION: Deny Request.

Ms. de Gracia addressed the Commission regarding her request for a hearing regarding the selection process for Senior Accountant. She explained that she has been performing the duties of a Senior Accountant in her current classification of Associate Accountant, and that her performance has been rated outstanding and/or above-standard.

Pat Syler of DHR advised the Commission that Ms. de Gracia has been underfilling the classification of Sr. Accountant, but has continued to perform the duties of Associate Accountant.

Carlos Arauz, Director DHR, explained that there has been a past practice wherein supervisors/personnel officers have written letters of recommendation for employees who do not have the experience or educational requirements outlined in the job specs. He further explained that the Civil Service Merit System is in place to take away any subjectivity in its hiring process. By allowing letters of reference and/or recommendation to be submitted on behalf of an employee, subjectivity is introduced. DHR, in conjunction with the order of the CAO, will not accept these letters of recommendation.

**Motion by Newman to accept staff recommendation; seconded by Pate. Carried.**

6. **Larry Sweet**, Program Specialist, HHSA, appealing the Department of Human Resources' decision that he is ineligible to compete in the recruitment for the classification of Health and Human Services Administrator III.

RECOMMENDATION: Deny Request.

Mr. Sweet explained that he was unsure why DHR did not consider him qualified for the HHSA III classification. He feels that he fully meets the requirements. Rosemarie Morano, Sr. Analyst on behalf of DHR and Lynette Mercado, Personnel Manager with HHSA explained that Mr. Sweet was lacking in experience within the public sector. Commissioner Newman asked for clarification regarding academic course work meeting the requirements in lieu of experience. It was noted that the job specifications did not match the job announcement regarding education and experience. Carlos Arauz explained that DHR is currently reviewing all jobs specifications. He agreed that the job announcement should reflect the specifications. Mr. Cook suggested that this matter be continued in order for DHR and HHSA to amend their response to the Commission.

**Motion by Newman to continue this item to the next meeting; seconded by Pate. Carried.**

## RECONSIDERATION

7. **Janet Arman**, Records and ID Clerk II, Sheriff's Department, requesting reconsideration of the Commission's March 6, 2002 decision not to grant Ms. Arman's request for an investigation into alleged improper personnel practices in the HHSA.

RECOMMENDATION: (1) Consider Ms. Arman's request for reconsideration and (2) Deny her request for Rule XI Investigation unless new relevant facts are presented.

The Commission noted that there was no basis upon which to grant a reconsideration.

**Motion by Dixon to not grant the request for reconsideration; seconded by Brummitt. Carried.**

**Motion by Newman to deny Rule XI Investigation; seconded by Dixon. Carried.**

## OTHER MATTERS

### Seal Performance Appraisal

8. **Lolita Tamayo**, Legal Support Assistant III, Office of the District Attorney, requesting the sealing of a Performance Appraisal for the period July 3, 2000 to July 3, 2001.

RECOMMENDATION: Grant Request.

Commissioner Newman questioned the Department regarding its support of Ms. Tamayo's request to seal her performance appraisal. Rick Needham, on behalf of the Office of the District Attorney explained that the Department was not opposing the sealing due to the amount of time the appeal took, as well as the fact that Employee was not given 5 days after the end of the rating period to consider the final appraisal.

Lolita Tamayo explained that she feels harmed by the misrepresentations in the Performance Appraisal for the period of July 3, 2000 to July 3, 2001.

Commissioner Newman voiced that he would vote against sealing the appraisal because 1) he was not convinced that Employee was harmed in any manner, and 2) a performance appraisal is an extraordinary tool which should not be sealed unless good cause supports doing so.

**Motion by Dixon to accept staff recommendation; seconded by Pate. Carried.**

<b>Ayes:</b>	<b>Austin, Dixon, Pate, Brummitt</b>
<b>Noes:</b>	<b>Newman</b>
<b>Abstentions</b>	<b>None.</b>

\* (THE COMMISSION ADJOURNED TO CLOSED SESSION TO DISCUSS ITEM NO. 4 ABOVE AND CONVENED TO OPEN SESSION WITHIN 30 MINUTES TO READ ITS FINDINGS AND RECOMMENDATIONS.)

## **Evidentiary Hearing**

9. Everett Bobbitt, Esq., on behalf of **Tom Basinski**, District Attorney Investigator, requesting an independent review in an evidentiary hearing based on a memorandum from a District Attorney Lieutenant to Mr. Basinski that constitutes an alleged reprimand. (Tabled from the Commission meeting of March 6, 2002)

Recommendation: Continue.

Subsequent to this Agenda being sent out, Mr. Bobbitt, on behalf of Mr. Baskinski, requested a withdrawal of this matter.

**Withdrawn.**

## **Extension of Temporary Appointments**

### 10. Health and Human Services Agency

A. 1 Food Services Worker (Arthur Saluta)

B. 50 Eligibility Technicians (Addie Brown, Osvaldo Mendoza, Armando Martinez, Veronica Yoquigua, Orin Shigeoka, Charles Hazel, Jennifer Knoll, Olga Lipkin, Thuy Hoang, Barbara Leifur, Margaret Miner, Griselda Huinquenz, Phoung-Mai Pham, Marina Humphrey, Belen Marrujo, Janet Salazar, Arlene Roux, Mirna Castaneda, Kathleen Hemesath, Jynx Bouchell, Gerardo Gutierrez, Brenda Verdin, Tamara Milic, Armando Patiag, Jaime Mendez, Karen Pfunder, Jenine Laurence, Suzanne Tijerina, Maria Nagata, Felicia Boyd, Janet Myhrvold, Lizzeth Fermin, Jun Fujimoto, Wath Chaiping, Ziezel Cuevas, Penny Williams, Dennis Rancapero, Flordeliza Largoza, Jamie Jorgens, Louis Morris, Angela Thompson, Kathleen Kremer, Javad Jalahi Mussari, Andrea Hernandez, Rochelle Otis, Dianne Timm, Gennet Hailmichael, Joshua LaForest, Terrance Tower, Luis Ramos)

### 11. Sheriff's Department

1 Photographic Audio-Visual Specialist (Andrew Suarez)

### 12. Agriculture/Weights & Measures

1 Insect Detection Specialist I (Regina Ort)

### 13. Alternate Public Defender

1 Deputy Alternate Public Defender (Craig Leff)

### 14. County Counsel

1 Senior Deputy County Counsel (Denise F. Bohdan)

RECOMMENDATION: Ratify Item Nos. 10 - 14.

**Item Nos. 10-14 ratified.**

### 15. Public Input.

Wendell Prude, S.E.I.U. 2028 addressed the Commission regarding appeal of a performance appraisal. He, on behalf of the Union, is curious as to the impact a sealed performance appraisal has on the Quality First program. He questioned whether a department can exclude an employee from Quality First if a sealed performance appraisal contains a below standard rating.

Ralph Shadwell, Sr. Deputy County Counsel, explained that Mr. Prude's question was not an issue for the Civil Service Commission, but rather should be addressed with the County's office of Labor Relations.

ADJOURNMENT: 4:15 P.M.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE APRIL 17, 2002.**